

PT 06-40

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

DUPAGE AME CHURCH,

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

05-PT-0050

Real Estate Tax Exemption

For 2004 Tax Year

P.I.N. 08-04-201-006-0000

08-03-102-003

DuPage County Parcels

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Edith Brown, on behalf of DuPage AME Church; Mr. Robert Rybica, Assistant State's Attorney, on behalf of DuPage County; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether property, identified by DuPage County Parcel Index Numbers 08-04-201-006-0000 and 08-03-102-003, qualifies for exemption from 2004 real estate taxes under 35 ILCS 200/15-125 which exempts parking areas, not leased or used for profit, and owned by a religious institution.

The controversy arises as follows: On December 9, 2004, DuPage AME Church (hereinafter "AME") filed two Real Estate Exemption Complaints with the Board of

Review of DuPage County (hereinafter the “Board”). The Board reviewed AME’s complaints and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a partial year exemption be granted for P.I.N. 08-04-201-006-0000 for 72% of the 2004 exemption year. On May 5, 2006 the Department granted an exemption for this P.I.N. “except the house and the land on which it stands” for 72% of the 2004 assessment year. At the evidentiary hearing, AME agreed to the Department’s exemption for 08-04-201-006-0000, and that P.I.N. is not at issue in this proceeding. Tr. p. 9.

The Board recommended that a full year exemption be granted for P.I.N. 08-03-102-003, which is used as a parking lot. The Department denied this exemption on May 5, 2005 finding that the property was not in exempt use. Dept Ex. No. 1. The only issue remaining for hearing was the Department’s denial of the exemption for the parking lot on P.I.N. 08-03-102-003. AME presented evidence regarding this parking lot at a formal hearing on August 8, 2006, with Dan Garvey, Director of Parks and Recreation for the Lisle Park District, and Lloyd Gillespie, Trustee of AME, providing oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that Department’s denial of an exemption for the parking lot for the 2004 assessment year be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that P.I.N. 08-03-102-003 was not in exempt use during the 2004 assessment year. Tr. pp. 9-10; Dept. Ex. No. 1.

2. AME purchased the subject property on June 13, 2001 for \$80,000. AME was in need of additional parking when its membership grew from 500 to 2,200 members. The parking lot at issue contains 63 spaces. Tr. pp. 31-32, 50; Dept. Ex. No. 2.
3. AME is located across Yackley Avenue from Tate Woods Park, owned by the Lisle Park District. Lisle Park District has a parking lot for 8 spaces with a cut-out for entry and exit onto Yackley Avenue. The subject property is next to Lisle Park District's parking lot. The Village of Lisle would not allow AME to make a cut-out on Yackley Avenue for its parking lot because the cut-out would be too close to the intersection of Yackley Avenue and Warrenville Road. The only entry/exit into AME's parking lot is through Lisle Park District's parking lot. Tr. pp. 18, 26-27, 32-34.
4. Tate Woods Park has two tennis courts, a baseball field, a playground, an open field for spontaneous play and a hiking trail. Prior to its leasing of parking from AME, park visitors had to park at AME's lot on the other side of Yackley Avenue, and then cross Yackley Avenue, a busy street, in order to use the park. Tr. pp. 15-16, 34-35.
5. On January 1, 2002, AME, as Lessor and Lisle Park District, as Lessee entered into a lease, for a 25 year period, commencing on the first day of the first month following completion of construction of the parking lot. "As consideration for Lessor's acquisition of the Premises and construction of the Church Lot," Lisle Park District agreed to pay AME on the commencement date, a lump sum of \$128,500 for the first term of the lease, and \$1,000 on the first, second and third anniversary of the commencement dates. "No further rent shall be payable thereafter for the balance of the Term." Tr. pp. 34-36; Dept. Ex. No. 2.

6. According to the lease, AME has exclusive use of the parking lot every Sunday between dawn and 3:00 p.m. and “on not more than 6 weekday evenings each year.” Lisle Park has exclusive use between dawn and dark at all times when AME does not have use. No parking is allowed between dark and dawn. Tr. pp. 23-24, 38-40; Dept. Ex. No. 2.
7. The lease requires AME to provide for snow removal, “at its sole cost and expense,” for both the subject property and the Lisle Park District parking lot for the term of the lease. Lisle Park District is to provide landscape maintenance (tree-trimming, lawn care) for the subject property and its own lot, “at its sole cost and expense.” It is the responsibility of AME and Lisle Park District to provide for periodic seal coating, restriping and asphalt repair of the [subject property] during the lease’s term, “the cost thereof shall be paid for equally by Lessor and Lessee.” Dept. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that AME has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting P.I.N. 08-03-102-003 from property taxes for the 2004 assessment year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” and section 15-125, which exempts parking areas, owned by a religious institution, not leased or used for profit, and used as a part of a use for which an exemption is provided in the Property Tax Code. 35 ILCS 200/15-40 and 35 ILCS 200/15-125, respectively. The Department’s denial of the exemption for P.I.N. 08-03-102-003 stated that “the property is not in exempt use.” Dept. Ex. No. 1. I conclude from this denial that the Department found the parking lot to be owned by an exempt religious organization. In fact, AME purchased the subject property on June 13, 2001 for \$80,000. The parking lot at issue contains 63 spaces. Tr. pp. 31-32, 50; Dept. Ex. No. 2.

I am unable to conclude from the testimony that the parking lot was/is not leased or used for profit. AME purchased the parking lot on June 13, 2001 for \$80,000. Dept. Ex. No. 2. The lease between AME and Lisle Park, dated January 1, 2002, states that within 120 days of the lease, AME shall “at its sole cost and expense,” cause a church lot

to be built on the premises. The term of the lease between AME and Lisle Park is for 25 years, “commencing on the first day of the first month following completion of construction.” “Beginning on the Commencement Date, Lessee shall pay Lessor rent for the first year of the Term in one lump sum payment of \$128,500.” Dept. Ex. No. 2.

Mr. Garvey was asked “what was the purpose of those [lease] payments.” He responded that “[T]he way that the Park District understood, it was to offset the cost of the acquisition and construction of the parking lot.” “It’s a shared cost in the development—acquisition and development of the lot.” Mr. Garvey also “understood” that AME would supply the Lisle Park District with “all of their receipts and everything to show what cost they had expended.” “And then the Lisle Park District was going to pay 50 percent of that and the church would absorb 50 percent.” Tr. pp. 19-20.

Mr. Garvey’s testimony contradicts the lease which states that AME will construct the parking lot at “its sole cost and expense.” No explanation was offered at the hearing for this contradiction. No documentary evidence was offered by AME so there is no evidence in the record as to what the costs were to build the parking lot and who actually paid for construction of the lot. Without any documentary evidence, I must conclude that AME, which bought the property for \$80,000, and leased it to Lisle Park District in the first year of operation for \$128,500, leased it for profit. If, in fact, some of Lisle Park’s \$128,500 payment went toward construction of the parking lot, I would still conclude that AME was leasing the lot for profit. The “profit” for AME would be that Lisle Park District is helping to offset AMES’ construction costs, and either mortgage costs or ownership costs, thereby increasing AMES’ equity interest in the subject property.

In the year 2004, the year at issue in this case, the lease required Lisle Park District to pay AME \$1,000 for use of the parking lot. The lease requires AME to provide for snow removal, “at its sole cost and expense,” for both the subject property and the Lisle Park District lot for the term of the lease. Lisle Park District is to provide landscape maintenance (tree-trimming, lawn care) for the subject property and its own lot, “at its sole cost and expense.” It is the responsibility of AME and Lisle Park District to provide for periodic seal coating, restriping and asphalt repair of the [subject property] during the lease’s term, “the cost thereof shall be paid for equally by Lessor and Lessee.” Dept. Ex. No. 2.

An applicant seeking a property tax exemption for its parking area must show three factors: (1) ownership of the parking area by an exempt institution, (2) fact that parking area is not leased or used for profit, and, (3) fact that it is used as part of a use for which exemption is provided by statute. Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998).

With regard to factor (2) in Mount Calvary, I am again unable to conclude that AME was not leasing the parking lot for profit in 2004. There was no testimony or explanation as to why Lisle Park District was paying AME \$1,000 for the year 2004. It is unclear whether Lisle Park District was paying AME \$1,000 for snow removal from the District’s own lot or AMES’ lot. Since AME owns and uses the parking lot on the subject property, AME would have to remove the snow from this lot regardless of the \$1,000 payment. There was no testimony regarding how the costs of snow removal compared to the costs of landscape maintenance. The lease requires Lisle Park District to share with AME in the costs of seal coating, restriping and asphalt repair. This offset to

AMES' maintenance costs can also be considered "profit." No documentary evidence was admitted on any of these issues. I am unable to determine from the record that the \$1,000 payment by Lisle Park District to AME for the 2004 lease term and the sharing of expenses for the subject property owned solely by AME does not constitute leasing or using the subject property "for profit," and this use is sufficient to deny an exemption under 35 ILCS 200/15-125.¹

WHEREFORE, for the reasons stated above, I recommend that the Department's determination of May 5, 2006 which granted an exemption for DuPage County P.I.N. 08-04-201-006-0000 "except the house and the land on which it stands" for 72% of the 2004 assessment year should be affirmed and that DuPage County P.I.N. 08-03-102-003 should not be exempt from property taxes for the 2004 assessment year.

December 1, 2006

Kenneth J. Galvin
Administrative Law Judge

¹ According to the testimony, AME did not invoice Lisle Park District for the \$1,000 payment in 2004 and Lisle Park District paid the \$1,000 on the date of the evidentiary hearing. Tr. p. 41. The timing of the \$1,000 payment is a contractual issue between AME and Lisle Park District and does not change my conclusions on this matter.